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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL PONCE,

Defendant and Appellant.

D054262

(Super. Ct. No. SCD198593)

APPEAL from a judgment of the Superior Court of San Diego County, Robert F. O'Neill, Judge. Affirmed.

Raul Ponce entered a negotiated guilty plea to second degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)) and admitted he personally used a knife in the commission of the offense (§ 12022, subd. (b)). Under the plea bargain the prosecution agreed to dismiss two special circumstance allegations. The parties stipulated to a prison term of 16 years to life. The trial court sentenced Ponce in accordance with the plea bargain.

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<sup>1</sup> Statutory references are to the Penal Code.

The trial court denied Ponce's request for a certificate of probable cause.

## FACTS

On the evening of April 25, 2006, 19-year-old Ponce, 13-year-old Manuel Reyes, 16-year-old Jose Perez and 17-year-old Tania Bataz went to visit someone named Danny at his residence. Bataz drove the group there in her white Mustang. The group stayed at Danny's residence for about an hour. It was dark outside when they left. Ponce asked to drive Bataz's Mustang, but she refused to let him and said Perez was going to drive the car. Ponce became noticeably upset and said, "Fuck you guys, then"; the remark was directed at Bataz. Ponce also said, "All right, bitch, watch."

With Perez driving, Bataz sat in the front seat, Reyes sat behind Perez, and Ponce sat behind Bataz. Perez drove the vehicle for about 10 to 15 minutes on Highway 94, when Ponce made a slashing motion across his own neck with his finger. Five minutes later, as the vehicle was transitioning from Highway 94 to Interstate 805, Ponce began stabbing Bataz repeatedly. The medical examiner reported Bataz suffered 98 stab wounds and 24 incise wounds.<sup>2</sup> There were at least five independently fatal wounds, including a three-inch stab wound to the left jugular vein.

During a hearing one week before the scheduled trial date, Ponce asked that his counsel, who had been representing him for two years, be fired and new counsel be appointed. The court held a *Marsden* (*People v. Marsden* (1970) 2 Cal.3d 118) hearing

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<sup>2</sup> An incise wound is made when the edge of the instrument is moved across a person's skin; a stab wound is made when the instrument is pressed into the skin.

outside the presence of the prosecutor and denied Ponce's request. Ponce then requested he be allowed to represent himself. After going over the *Lopez* (*People v. Lopez* (1977) 71 Cal.App.3d 568) waiver form with Ponce, the court ordered Ponce to undergo a psychiatric evaluation to determine whether he was competent to make the decision to represent himself. After receiving the psychiatric evaluation, the court denied Ponce's request to represent himself.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court had jurisdiction to accept Ponce's guilty plea after finding him incompetent to waive the assistance of counsel for trial; and (2) whether this issue may be raised on appeal in the absence of a certificate of probable cause.

We granted Ponce permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Ponce has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

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NARES, Acting P. J.

WE CONCUR:

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O'ROURKE, J.

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IRION, J.